

DRAFT
SERVICE AGREEMENT BETWEEN CITY OF SUNNYVALE
AND GS MANAGEMENT COMPANY
FOR PROPERTY MANAGEMENT SERVICES

THIS AGREEMENT, dated _____, is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and GS MANAGEMENT COMPANY, a California corporation ("CONTRACTOR").

WHEREAS, on APRIL 27, 2004, CITY issued Request for Proposals No. F0204-88 for property management services; and

WHEREAS, CONTRACTOR has submitted a proposal in response to the Request for Proposals; and

WHEREAS, CITY has determined that the services proposed by CONTRACTOR offers the best value to CITY;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services

CONTRACTOR shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONTRACTOR shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be from July 15, 2004, through July 14, 2007, unless otherwise terminated. The Agreement may be extended for two additional one-year periods at the option of CITY. Should CITY decide to exercise its option to extend the Agreement, notice shall be given to CONTRACTOR at least sixty (60) days prior to the last day of the Agreement term, including extensions, if any. CONTRACTOR shall deliver the agreed upon services to CITY as specified in Exhibit "A".

3. Duties of CITY

CITY shall supply any documents or information available to CITY required by CONTRACTOR for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONTRACTOR as full compensation for the services rendered pursuant to this Agreement, the amounts set forth in Exhibit "B". CONTRACTOR shall invoice CITY for services provided no more frequently than monthly. Payment shall be made within thirty (30) days of receipt of an accurate, itemized invoice by CITY's Accounts Payable Unit.

5. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONTRACTOR shall not accept any obligation which is inconsistent or incompatible with CONTRACTOR's obligations under this Agreement.

6. Confidential Information

CONTRACTOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONTRACTOR may become aware in the performance of its services.

7. Compliance with Laws

- (a) CONTRACTOR shall strictly adhere to all state and federal laws with respect to discrimination in employment and shall not discriminate against any individual on the basis of race, color, religion, gender, sexual orientation, marital status, national origin, age or disability.
- (b) CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

8. Independent Contractor

CONTRACTOR is acting as an independent contractor in performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

9. Indemnity

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

10. Insurance

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "C."

11. CITY Representative

Mike Chan, Sunnyvale Property Manager, as City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

12. CONTRACTOR Representative

Phyllis Y. Osaki, President, shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONTRACTOR pertaining to the services to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

13. Notices

All notices required by the Agreement shall be in writing, and shall be personally delivered or sent by first class mail, postage prepaid or by commercial courier, addressed as follows:

To CITY: Mike Chan, Sunnyvale Property Manager
 Department of Public Works
 CITY OF SUNNYVALE
 P. O. Box 3707
 Sunnyvale, CA 94088-3707

To CONTRACTOR: Phyllis Y. Osaki, President
 GS MANAGEMENT COMPANY
 5674 Sonoma Drive
 Pleasanton, CA 94566

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered.

Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

14. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

15. Termination

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

16. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

17. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By _____
City Clerk

By _____
City Manager

APPROVED AS TO FORM:

GS MANAGEMENT COMPANY
("CONTRACTOR")

By _____
City Attorney

By _____

Title and Date

By _____

Title and Date

EXHIBIT "A"
SCOPE OF SERVICES

CONTRACTOR shall:

1. Represent the City in dealings with tenants (both existing and potential), contractors who perform work on the property, and the commercial broker community.
2. Act in the best interest of the City by maximizing revenues and minimizing expenditures. Prepare and submit to the City an annual budget (July 1 through June 30) of revenues and expenditures.
3. Understand and enforce the City's rules and regulations relative to the property and its use.
4. Handle all tenant interactions, including thoroughly screening all potential tenants prior to lease execution, collecting timely rent/lease payments, conducting daily inspections of property (both scheduled and unscheduled), handling evictions and tenant conflicts, and other legal issues.
5. Preserve and protect City's property by ensuring that it is maintained and repaired in a safe, timely, appropriate and cost effective manner. Enter into contracts for maintenance and repair, when appropriate. Obtain a minimum of three written quotations for work, the cost of which is \$5,000 to \$25,000, and contract with the firm that offers the best value to the City. Consult with the City's Property Manager prior to contract execution for any maintenance and repair over \$25,000.
6. Respond to tenant problems and City inquiries in a timely manner, including providing a mechanism for immediate response to emergencies.
7. Collect rent/lease deposits and payments; and issue timely payment to contractors, public utility companies, etc., with all prompt payment discounts being passed on to the City. Establish a bank account into which all deposits and revenues relating to City-owned property shall be deposited and from which all expenditures relating to City-owned property is paid.
8. Prepare and submit a monthly report to the City's Property Manager which itemizes all deposits, revenues and expenditures, tenant status and vacancies, and other pertinent information. Attach to the monthly

report copies of written quotations received for each reported expenditure. Transfer revenue to City in a timely manner.

9. Establish rents that are current and competitive; and initiate rent increases, as appropriate, based upon an informed and accurate knowledge of the local market.
10. Provide quarterly market data to provide City staff with a current and accurate macro view of the industrial lease sector.
11. Take all necessary steps to ensure the highest possible occupancy rate, including the quick preparation of vacated units for rental/lease.
12. Maintain records of all rentals/leases (i.e. lease agreements) and turn original documents over to City upon lease termination.
13. Handle all routine aspects of the day-to-day operation of the complex without City involvement, whenever possible. Cooperate with the City's Property Manager and other City staff, as appropriate, to resolve ongoing problems or outstanding issues.
14. Make recommendations to the City's Property Manager relative to significant property issues.
15. Conduct on-site property inspections on a periodic basis but no less than once per week.

EXHIBIT "B"

COMPENSATION

Property Management Fee

CITY shall pay CONTRACTOR to provide property management services for a monthly fee equal to 3.5% of the effective gross income or a minimum of One Thousand Nine Hundred and no/100 Dollars (\$1,900.00) per month, whichever is greater. Effective gross income is defined as the base rent, late charges and any payment to CITY by tenants for operating costs or direct expenses of the property.

Lease Services Fee

CITY shall pay CONTRACTOR a commission for negotiating term leases in accordance with this Agreement. For new leases with a procuring broker, the commission shall be computed at a rate of 3% of Gross Rents for years 1 through 3 and at 2% of Gross Rents for years 4 and 5. For new leases without a procuring broker, the commission shall be computed at a rate of 4.5% of Gross Rents for years 1 through 3 and at 3% of Gross Rents for years 4 and 5. For every successfully executed tenant renewal or tenant expansion with or without a procuring broker, the commission shall be computed at a rate of 3% of Gross Rents for years 1 through 3 and at 2% of Gross Rents for years 4 and 5.

Reimbursable Expenses

CITY shall reimburse CONTRACTOR for expenses directly related to the management of the property at actual cost, including, but not limited to, postage, overnight mail, and copies. Mileage shall be at the current IRS mileage rate.

EXHIBIT "C"
INSURANCE REQUIREMENTS

CONTRACTOR shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

CONTRACTOR shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

CONTRACTOR shall take out and maintain during the life of the contract **Auto Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,00.

CONTRACTOR shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONTRACTOR, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by CONTRACTOR, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONTRACTOR's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.